29 June 2000

Original: English

New York
13-31 March 2000
12-30 June 2000
27 November-8 December 2000

Report of the Working Group on Elements of Crimes

Elements of crimes

Addendum

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Article 7
Crimes against humanity

Introduction

1. Since article 7 pertains to international criminal law, its provisions, consistent with article 22, must be strictly construed, taking into account that crimes against humanity as defined in article 7 are among the most serious crimes of concern to the international community as a whole, warrant and entail individual criminal responsibility, and require conduct which is impermissible under generally applicable international law, as recognized by the principal legal systems of the world.

2. The last two elements for each crime against humanity describe the context in which the conduct must take place. These elements clarify the requisite participation in and knowledge of a widespread or systematic attack against a civilian population. However, the last element should not be interpreted as requiring proof that the perpetrator had knowledge of all characteristics of the attack or the precise details of the plan or policy of the State or organization. In the case of an emerging widespread or systematic attack against a civilian population, the intent clause of the last element indicates that this mental element is satisfied if the perpetrator intended to further such an attack.

3. "Attack directed against a civilian population" in these context elements is understood to mean a course of conduct involving the multiple commission of acts referred to in article 7, paragraph 1, of the Statute against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack. The acts need not constitute a military attack. It is understood that "policy to commit such attack" requires that the State or organization actively promote or encourage such an attack against a civilian population.[1]

Article 7 (1) (a)
Crime against humanity of murder

1. The perpetrator killed[2] one or more persons.

2. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

3. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack against a civilian population.

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[1] A policy which has a civilian population as the object of the attack would be implemented by State or organizational action. Such a policy may, in exceptional circumstances, be implemented by a deliberate failure to take action, which is consciously aimed at encouraging such attack. The existence of such a policy cannot be inferred solely from the absence of governmental or organizational action.

[2] The term "killed" is interchangeable with the term "caused death". This footnote applies to all elements which use either of these concepts.

Article 7 (1) (b)
Crime against humanity of extermination

1. The perpetrator killed[3] one or more persons, including by inflicting conditions of life calculated to bring about the destruction of part of a population.[4]

2. The conduct constituted, or took place as part of,[5] a mass killing of members of a civilian population.

3. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

4. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Article 7 (1) (c)
Crime against humanity of enslavement

1. The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.[6]

2. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

3. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Article 7 (1) (d)
Crime against humanity of deportation or forcible transfer of population

1. The perpetrator deported or forcibly[7] transferred,[8] without grounds permitted under international law, one or more persons to another State or location, by expulsion or other coercive acts.

2. Such person or persons were lawfully present in the area from which they were so deported or transferred.

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[3] The conduct could be committed by different methods of killing, either directly or indirectly.

[4] The infliction of such conditions could include the deprivation of access to food and medicine.

[5] The term "as part of" would include the initial conduct in a mass killing.

[6] It is understood that such deprivation of liberty may, in some circumstances, include exacting forced labour or otherwise reducing a person to a servile status as defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956. It is also understood that the conduct described in this element includes trafficking in persons, in particular women and children.

[7] The term "forcibly" is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment.

[8] "Deported or forcibly transferred" is interchangeable with "forcibly displaced".

3. The perpetrator was aware of the factual circumstances that established the lawfulness of such presence.

4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Article 7 (1) (e)
Crime against humanity of imprisonment or other severe deprivation of physical liberty

1. The perpetrator imprisoned one or more persons or otherwise severely deprived one or more persons of physical liberty.

2. The gravity of the conduct was such that it was in violation of fundamental rules of international law.

3. The perpetrator was aware of the factual circumstances that established the gravity of the conduct.

4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Article 7 (1) (f)
Crime against humanity of torture[9]

1. The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.

2. Such person or persons were in the custody or under the control of the perpetrator.

3. Such pain or suffering did not arise only from, and was not inherent in or incidental to, lawful sanctions.

4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

[9] It is understood that no specific purpose need be proved for this crime.

Article 7 (1) (g)-1
Crime against humanity of rape

1. The perpetrator invaded[10] the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.

2. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.[11]

3. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

4. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Article 7 (1) (g)-2
Crime against humanity of sexual slavery[12]

1. The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.[13]

2. The perpetrator caused such person or persons to engage in one or more acts of a sexual nature.

3. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

4. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

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[10] The concept of "invasion" is intended to be broad enough to be gender-neutral.

[11] It is understood that a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity. This footnote also applies to the corresponding elements of article 7 (1) (g)-3, 5 and 6.

[12] Given the complex nature of this crime, it is recognized that its commission could involve more than one perpetrator as a part of a common criminal purpose.

[13] It is understood that such deprivation of liberty may, in some circumstances, include exacting forced labour or otherwise reducing a person to a servile status as defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956. It is also understood that the conduct described in this element includes trafficking in persons, in particular women and children.

Article 7 (1) (g)-3
Crime against humanity of enforced prostitution

1. The perpetrator caused one or more persons to engage in one or more acts of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.

2. The perpetrator or another person obtained or expected to obtain pecuniary or other advantage in exchange for or in connection with the acts of a sexual nature.

3. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

4. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Article 7 (1) (g)-4
Crime against humanity of forced pregnancy

1. The perpetrator confined one or more women forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law.

2. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

3. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Article 7 (1) (g)-5
Crime against humanity of enforced sterilization

1. The perpetrator deprived one or more persons of biological reproductive capacity.[14]

2. The conduct was neither justified by the medical or hospital treatment of the person or persons concerned nor carried out with their genuine consent.[15]

3. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

4. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

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[14] The deprivation is not intended to include birth-control measures which have a non-permanent effect in practice.

[15] It is understood that "genuine consent" does not include consent obtained through deception.

Article 7 (1) (g)-6
Crime against humanity of sexual violence

1. The perpetrator committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.

2. Such conduct was of a gravity comparable to the other offences in article 7, paragraph 1 (g), of the Statute.

3. The perpetrator was aware of the factual circumstances that established the gravity of the conduct.

4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Article 7 (1) (h)
Crime against humanity of persecution

1. The perpetrator severely deprived, contrary to international law,[16] one or more persons of fundamental rights.

2. The perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such.

3. Such targeting was based on political, racial, national, ethnic, cultural, religious, gender as defined in article 7, paragraph 3, of the Statute, or other grounds that are universally recognized as impermissible under international law.

4. The conduct was committed in connection with any act referred to in article 7, paragraph 1, of the Statute or any crime within the jurisdiction of the Court.[17]

5. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

6. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

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[16] This requirement is without prejudice to paragraph 6 of the General Introduction to the Elements of Crimes.

[17] It is understood that no additional mental element is necessary for this element other than that inherent in element 6.

Article 7 (1) (i)
Crime against humanity of enforced disappearance of persons[18] [19]

1. The perpetrator:

(a) Arrested, detained[20] [21] or abducted one or more persons; or

(b) Refused to acknowledge the arrest, detention or abduction, or to give information on the fate or whereabouts of such person or persons.

2. (a) Such arrest, detention or abduction was followed or accompanied by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person or persons; or

(b) Such refusal was preceded or accompanied by that deprivation of freedom.

3. The perpetrator was aware that:[22]

(a) Such arrest, detention or abduction would be followed in the ordinary course of events by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person or persons;[23] or

(b) Such refusal was preceded or accompanied by that deprivation of freedom.

4. Such arrest, detention or abduction was carried out by, or with the authorization, support or acquiescence of, a State or a political organization.

5. Such refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person or persons was carried out by, or with the authorization or support of, such State or political organization.

6. The perpetrator intended to remove such person or persons from the protection of the law for a prolonged period of time.

7. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

8. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

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[18] Given the complex nature of this crime, it is recognized that its commission will normally involve more than one perpetrator as a part of a common criminal purpose.

[19] This crime falls under the jurisdiction of the Court only if the attack referred to in elements 7 and 8 occurs after the entry into force of the Statute.

[20] The word "detained" would include a perpetrator who maintained an existing detention.

[21] It is understood that under certain circumstances an arrest or detention may have been lawful.

[22] This element, inserted because of the complexity of this crime, is without prejudice to the General Introduction to the Elements of Crimes.

[23] It is understood that, in the case of a perpetrator who maintained an existing detention, this element would be satisfied if the perpetrator was aware that such a refusal had already taken place.

Article 7 (1) (j)
Crime against humanity of apartheid

1. The perpetrator committed an inhumane act against one or more persons.

2. Such act was an act referred to in article 7, paragraph 1, of the Statute, or was an act of a character similar to any of those acts.[24]

3. The perpetrator was aware of the factual circumstances that established the character of the act.

4. The conduct was committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups.

5. The perpetrator intended to maintain such regime by that conduct.

6. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

7. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Article 7 (1) (k)
Crime against humanity of other inhumane acts

1. The perpetrator inflicted great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act.

2. Such act was of a character similar to any other act referred to in article 7, paragraph 1, of the Statute.[25]

3. The perpetrator was aware of the factual circumstances that established the character of the act.

4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

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[24] It is understood that "character" refers to the nature and gravity of the act.

[25] It is understood that "character" refers to the nature and gravity of the act.